

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 7th day of August, 2002, by and between the United States of America, including the Department of Health and Human Services, Office of Inspector General (“HHS-OIG”) (collectively "United States"), and Muhlenberg Primary Care, P.C. ("Muhlenberg"), to resolve potential civil claims more fully described herein.

WHEREAS, Muhlenberg, located at 2649 Schoenersville Road, Bethlehem, Pennsylvania 18017, is engaged in the provision of health care services to Medicare and Medicaid beneficiaries and treats residents of long-term care facilities; and

WHEREAS, as a result of an investigation by the United States Attorney's Office for the Eastern District of Pennsylvania and the Department of Health and Human Services, the United States of America contends that it has certain civil claims against Muhlenberg under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or at common law, for submitting or causing to be submitted, claims for payment for inadequate services that were rendered in June 2000 to a resident of Manor Care Bethlehem II nursing home by failing to adequately treat a resident who suffered from over-anticoagulation resulting from an overdose of Coumadin, weight loss and pressure ulcers (hereinafter “Covered Conduct”);

WHEREAS, Muhlenberg denies any wrongdoing, inadequacy or liability in regard to the care rendered to the resident of the Manor Care Bethlehem II nursing home;

WHEREAS, the parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing on the part of Muhlenberg;

WHEREAS, the parties wish to resolve this matter in an amicable manner without the need for protracted litigation;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the parties, intending to be legally bound, enter into the following:

1. Muhlenberg agrees to pay the sum of Five Thousand Five Hundred Dollars (\$5,500.00) in settlement of its potential civil liability to the United States relating to the Covered Conduct at the time of execution of this Settlement Agreement.
2. Muhlenberg agrees to implement a program that will ensure that all verbal orders given by its physicians are maintained in a log book and cross-checked with the nursing home in which its physicians are practicing to ensure accuracy in the receipt and implementation of the verbal order. Muhlenberg agrees that all verbal orders will be co-signed by the attending physician within forty-five (48) hours. Each physician will maintain a log book that will be kept at his or her principal office and shall be available for inspection by the United States upon request. Additionally, Muhlenberg agrees to perform in-service training for nursing home personnel at the Manor Care Bethlehem II nursing home on relevant assessment, care and communication issues as deemed appropriate by the physicians in consultation with the nursing home including, but not limited to, the importance of ensuring that medications are properly documented and dispensed. Muhlenberg agrees to perform at least three (3) of these training sessions annually and will submit the training topic and materials for review and comment to the United States within ten (10) days prior to the training. All comments offered by the United States shall be considered in good faith by Muhlenberg for inclusion in the training.

3. Muhlenberg recognizes that some older adults residing in nursing homes present challenging medical diagnoses and treatment issues and to that end, agrees, at a minimum, to:
- (A) Perform and document accurate, timely and relevant medical assessments;
 - (B) Properly define and describe resident symptoms and problems, clarify and verify diagnoses, relate diagnoses to resident problems and help establish a realistic prognosis and care goals;
 - (C) Implement a system that ensures that reasonable efforts are made to contact a resident's former attending physician(s), specialists or other relevant medical personnel to ensure that a full and complete care and needs assessment can be performed. This procedure shall be submitted to the United States for review within thirty (30) days of execution of this Settlement Agreement;
 - (D) Manage and document ethics issues consistent with relevant laws and regulations and with residents' wishes; and
 - (E) Provide sufficiently clear, legible written medication orders to appropriate staff in order to avoid misinterpretation and potential medication errors.
4. If any of its physicians acts as a medical director for any long-term care facility, Muhlenberg agrees that, at a minimum, the medical director will comply with all statutory and regulatory requirements governing the roles and responsibilities of medical directors and the medical director will actively intervene in residents' care in the event the residents' attending physician is unresponsive to the needs of a resident. In addition, Muhlenberg agrees to reasonably abide, as applicable, by the provisions set forth in Attachment A and standards promulgated by the American Medical Directors Association relating to the

“Role and Responsibilities of the Medical Director in the Nursing Home”, attached hereto as Exhibit B and any revisions thereto.

5. In the event that Muhlenberg fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of Muhlenberg’s representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs in its favor; or
- b. exercise any other right granted by law.

6. Each party to this Settlement Agreement shall bear its own costs except as otherwise provided herein.

7. The obligations imposed by this Settlement Agreement on Muhlenberg shall be in effect for a period of three (3) years from the effective date of this Settlement Agreement. During that three-year period, thirty (30) days after the first, second and third anniversary date of this Settlement Agreement, Muhlenberg will submit Annual Reports to the U.S. Attorney’s Office and HHS-OIG regarding the status of its compliance with this Agreement. Each annual report shall include any amendments or revisions to Muhlenberg’s verbal order procedure and the basis for any changes to this procedure, a list of in-service training sessions performed and a list of all long-term care facilities for which Muhlenberg is providing services and/or has a physician serving as medical director. Muhlenberg shall certify that it is complying with the terms of this Settlement Agreement at the time of the submission of its Annual Report.

8. In consideration of the promises made by Muhlenberg in this Settlement Agreement and conditioned upon payment in full of the settlement amount referenced in Paragraph 1, the United States, on behalf of itself, its officers, agents, agencies, and departments, hereby releases and discharges Muhlenberg, its officers and directors, from any and all civil and administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States has asserted or could have asserted against Muhlenberg, its officers and directors and the current medical director at Manor Care Bethlehem II under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. §1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for the Covered Conduct.

9. In consideration of the obligations of Muhlenberg as set forth in this Settlement Agreement, and conditioned upon payment in full of the settlement amount referenced in paragraph 1, HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Muhlenberg, its officers and directors and the current medical director at Manor Care Bethlehem II under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct. HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude Muhlenberg, its officers and directors and the current medical director at Manor Care Bethlehem II from the Medicare, Medicaid or other Federal health care programs under

42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the HHS-OIG from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in paragraph 10.

10. The parties agree that the releases given in the preceding two paragraphs specifically exclude the following:
 - a. Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.
 - b. Any disputes or claims arising under any express or implied warranties relating to products or services other than those released.
 - c. Any disputes or claims arising under the criminal laws of the United States.
 - d. Subject to the enforcement provisions of Paragraph 5, any obligations created by this Settlement Agreement.
 - e. Any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct.
 - f. Except as explicitly stated in this Agreement, any administrative liability.
 - g. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct.
11. In consideration for such repose and on the terms and conditions contained herein, Muhlenberg fully and finally releases, dismisses, and forever discharges the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which Muhlenberg has asserted or could have asserted against the United States, its

agencies, employees, servants, and agents before the effective date of this Settlement Agreement for the Covered Conduct.

12. This Settlement Agreement constitutes the complete agreement between the parties and may not be amended except by the written consent of the parties.
13. The undersigned individuals signing this Settlement Agreement on behalf of Muhlenberg represent and warrant that they are authorized by Muhlenberg to execute this Settlement Agreement. The undersigned United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.
14. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.
15. This Agreement is effective on the date of signature of the last signatory to the Agreement.

16. This Settlement Agreement shall be binding on the heirs, administrators,
executors, successors, and transferees of Muhlenberg.

UNITED STATES OF AMERICA:

MUHLENBERG PRIMARY CARE, P.C.

PATRICK L. MEEHAN
UNITED STATES ATTORNEY

DATE: _____

JAMES G. SHEEHAN
ASSISTANT U.S. ATTORNEY
CHIEF, CIVIL DIVISION

DATE

DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

DATE

LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATE